
Memorandum 94-31**Exemptions from Enforcement of Money Judgments:
Decennial Review (Draft Tentative Recommendation)**

Attached to this memorandum is a staff draft of a tentative recommendation providing a \$5000 wild-card exemption. This implements a Commission decision made at the May meeting. If a draft can be approved, the tentative recommendation will be distributed for comment in August. In addition to substantive review, Commissioners should review the draft tentative recommendation and suggest any editorial revisions at the meeting.

At the May meeting, the Commission decided only the amount of the exemption (\$5000) and that it should not be doubled. Several additional issues remain to be considered:

Should the exemption be available to debtors who have a homestead? The wildcard exemption is offered as a way of updating the set of monetary exemptions to take account of inflation since 1983. But the homestead exemption, unlike the others, has been increased at a rate approximating inflationary effects. In a number of other states, a wildcard exemption is offered as a homestead substitute, presumably to provide some degree of balance for debtors who do not own homes. On the other hand, the personal property exemptions declined in the face of inflation independent of whether the debtor qualifies for a homestead exemption.

If the wildcard exemption is drafted as a homestead substitute, what procedures are necessary to implement the restriction? If all exemptions were on the table at the same time, it would be simple, but that is not necessarily how exemptions work in enforcement of judgments. The personal property exemption procedure is separate from the homestead exemption procedure. The attached draft attempts to deal with the issues in a summary fashion and the staff hopes that it will not be necessary to draft a new clockworks just to deal with this issue.

Legislation is pending in Congress to double the amount of the federal bankruptcy exemptions. The Commission has taken a restrictive approach in this project, focusing on the monetary exemptions from enforcement of money judgments. While these exemptions may be used in bankruptcy, the separate set

of alternative bankruptcy exemptions in Code of Civil Procedure Section 703.140 cannot be used in debt collection proceedings. Obviously, the level of exemptions, the nature of exemptions in relation to the debtor's estate, and the disparity between the two sets of exemptions can play a major role in determining whether to declare bankruptcy. Thus far, the Commission has not considered the larger policy issues involved in the interplay of state exemptions and federal exemptions. However, the Commission should keep in mind that the Legal Services Section has urged that the alternative bankruptcy exemptions be doubled in California in anticipation of doubling on the federal level. The staff thinks that would be premature, and it does not necessarily follow that the alternative bankruptcy exemptions on the state level should be doubled simply because the federal Bankruptcy Code exemptions are doubled, or that the Commission need be involved in that recommendation. Still, it is a troublesome issue that overlays this project.

Respectfully submitted,

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1 in 1983 would need to be multiplied by a factor of from 1.5 to 1.67 to adjust for
2 changes in the consumer price index.⁴

3 The homestead exemption has been increased and supplemented several times
4 since 1983. Originally, the basic homestead exemption in Code of Civil Procedure
5 Section 704.730 was \$30,000, for a single resident or where all residents were
6 debtors, with a special exemption of \$45,000 for family units and persons over 65.
7 In 1986, a \$60,000 exemption was added where a resident was over 65 or disabled.
8 In 1988, the third tier exemption was increased from \$60,000 to \$75,000. In 1990,
9 all three tiers were increased, to \$50,000, \$75,000, and \$100,000, respectively.
10 The basic homestead exemption has been increased so that it is approximately the
11 same as it was in 1982, as measured by the home ownership component of the
12 Consumer Price Index for western states.⁵

13 The exemptions under the Federal Bankruptcy Code are currently the subject of
14 reform efforts in Congress.⁶ Although California has opted out of the federal
15 exemption scheme,⁷ the California alternative bankruptcy exemptions parallel the
16 federal amounts.⁸ At this point, it is premature to consider increasing the
17 alternative bankruptcy exemptions, because final action on the federal level has
18 not taken place and an increase of the federal bankruptcy exemptions is not
19 directly relevant since California has opted out.

20 The Commission has reviewed the dollar amount of exemptions under California
21 law and concludes that the best approach is to provide a "wildcard" exemption that
22 a judgment debtor may apply to any property.⁹ This new exemption would achieve
23 the goal of compensating for inflation. The wildcard exemption approach would
24 also provide additional flexibility in the exemption statutes, relieving somewhat
25 the rigid categories of the existing monetary exemptions.

26 The Commission recommends that the wildcard exemption be set at \$5000. This
27 amount is approximately equal to the total amount by which the existing
28 exemptions for a (1) motor vehicle, (2) tools of a trade, business, or profession, (3)

4. Using a base of 1982-84 as 100, in 1993 the California average CPI factor is approximately 150. See Department of Finance, California Economic Indicators November/December 1993.

5. See U.S. Department of Labor, CPI Detailed Report Data for November 1993, Table 11. Using a factor of 100/166, the basic \$30,000 exemption should be \$49,800 and the second tier \$45,000 exemption should be \$74,700. The third tier, which was set at \$60,000 in 1986, if subject to the same factor, would be \$99,600.

6. See, e.g., H.R. 1998.

7. Code Civ. Proc. § 703.130.

8. See Code Civ. Proc. § 703.140.

9. Many states and the federal Bankruptcy Code provide wildcard exemptions. See, e.g., [Alabama, Arizona, Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Nebraska, New Mexico, North Dakota, Virginia, Washington]; 11 U.S.C. § 522. The California bankruptcy alternative exemptions also provide a wildcard exemption. Code Civ. Proc. § 703.140(b)(5).

1 jewelry, heirlooms, and works of art, and (4) life insurance would need to be
2 increased to compensate for inflation since the amounts were set in 1982.¹⁰

3 The wildcard exemption is not doubled for married debtors. This is consistent
4 with the general policy of the exemption statutes.¹¹

5 [The new wildcard exemption would not be available to debtors who have a
6 homestead exemption, in view of the substantial amount of the homestead
7 exemption and in recognition of the increases in the homestead exemption that
8 have kept it in pace with inflation.]

10. The total amount of these exemptions is \$10,000. If the inflation factor is 1.5, the required increase is \$5000.

11. In relevant part, Code of Civil Procedure Section 704.220(a) provides:

Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

